

AMENDED IN SENATE MAY 24, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 9, 2012

## **SENATE BILL**

**No. 1434**

---

### **Introduced by Senator Leno**

February 24, 2012

---

An act to add Chapter 3.6 (commencing with Section 1546) to Title 12 of Part 2 of the Penal Code, relating to location information.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1434, as amended, Leno. Location information: warrants.

Existing law authorizes a court or magistrate to issue a warrant for the search of a place and the seizure of property or things identified in the warrant where there is probable cause to believe that specified grounds exist. Existing law also provides for a warrant procedure for the acquisition of stored communications in the possession of a provider of electronic communication service or a remote computing service.

This bill would prohibit a government entity, as defined, from obtaining the location information of an electronic device without a valid search warrant issued by a duly authorized magistrate unless certain exceptions apply, including in an emergency or when requested by the owner of the device. The bill would prohibit the use of information obtained in violation of these provisions ~~from being used~~ in a civil or administrative hearing. ~~The bill would require a provider to prepare a report containing specified information relating to requests for location information and make the report available to the public on the Internet, in a searchable format, on or before March 1 of each year, as provided. If the provider does not have an Internet Web site, the bill~~

would require the provider to send the report to the Office of Privacy Protection.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 3.6 (commencing with Section 1546) is added to Title 12 of Part 2 of the Penal Code, to read:

CHAPTER 3.6. LOCATION PRIVACY

1546. For purposes of this chapter, the following definitions shall apply:

(a) “Electronic communication service” means a service that provides to users thereof the ability to send or receive wire or electronic communications.

(b) “Electronic device” means a device that enables access to, or use of, an electronic communication service, remote computing service, or location information service.

(c) “Government entity” means a state or local agency, including, but not limited to, a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

(d) “Location information” means information, concerning the location of an electronic device, including both the current location and any prior location of the device, that, in whole or in part, is generated, derived from, or obtained by the operation of an electronic device.

(e) “Location information service” means the provision of a global positioning service or other mapping, locational, or directional information service.

(f) “Owner” means the person or entity recognized by the law as having the legal title, claim, or right to, an electronic device.

~~(g) “Provider” means a commercial entity offering an electronic communication service, remote computing service, or location information service.~~

~~(h)~~

1 (g) “Remote computing service” means the provision of  
2 computer storage or processing services by means of an electronic  
3 communications system.

4 (i)

5 (h) “User” means a person or entity that uses an electronic  
6 device.

7 1546.1. (a) No government entity shall obtain the location  
8 information of an electronic device without a valid search warrant  
9 issued by a duly authorized magistrate using procedures established  
10 pursuant to Chapter 3 (commencing with Section 1523).

11 (b) No search warrant shall issue for the location of an electronic  
12 device pursuant to this section for a period of time longer than is  
13 necessary to achieve the objective of the authorization, nor in any  
14 event longer than 30 days, commencing on the day of the initial  
15 obtaining of location information, or 10 days after the issuance of  
16 the warrant, whichever comes first. Extensions of a warrant may  
17 be granted, but only upon a *judge or magistrate* finding of  
18 continuing probable cause ~~by the judge or magistrate~~, and that the  
19 extension is necessary to achieve the objective of the authorization.  
20 Each extension granted for a warrant pursuant to this subdivision  
21 shall be for no longer than the authorizing judge or magistrate  
22 deems necessary to achieve the purposes for which the warrant  
23 was originally granted, but in any event, shall be for no longer  
24 than 30 days.

25 (c) Notwithstanding subdivision (a), a government entity may  
26 obtain location information without a search warrant, as provided  
27 in this section, in any of the following circumstances:

28 (1) In order to respond to the user’s call for emergency services.

29 (2) With the informed, affirmative consent of the owner or user  
30 of the electronic device concerned, provided that the owner or user  
31 may not consent to the disclosure of location information if the  
32 device is known or believed to be in the possession of, or attached  
33 to a possession of, a third party known to the owner or user.

34 (3) Pursuant to a request by a government entity that asserts  
35 that the government entity reasonably believes that an emergency  
36 involving immediate danger of death or serious physical injury to  
37 ~~the owner or user~~ *any person* requires ~~the immediate access to the~~  
38 *disclosure, without delay, of location information relating to the*  
39 *emergency* and there is insufficient time to obtain a warrant. The  
40 government entity seeking the location information pursuant to

1 this paragraph shall file with the appropriate court a written  
2 statement setting forth the facts giving rise to the emergency *and*  
3 *the facts why the person whose location information was sought*  
4 *was believed to be important in addressing the emergency*, no later  
5 than 48 hours after seeking disclosure.

6 ~~1546.2. (a) Unless disclosure of information pertaining to a~~  
7 ~~particular request or set of requests is specifically prohibited by~~  
8 ~~law, a provider shall prepare a report including all of the following~~  
9 ~~information, to the extent it can be reasonably determined:~~

10 ~~(1) The number of federal and state warrants for location~~  
11 ~~information and the number of requests for location information~~  
12 ~~made with the informed consent of the user as described in~~  
13 ~~paragraph (2) of subdivision (c) of Section 1546.1 or emergency~~  
14 ~~requests received by the provider pursuant to paragraph (1) of~~  
15 ~~subdivision (c) of Section 1546.1 received by the provider from~~  
16 ~~January 1 to December 31, inclusive, of the previous year.~~

17 ~~(2) The total number of disclosures made by the provider~~  
18 ~~pursuant to Section 1546.1, from January 1 to December 31,~~  
19 ~~inclusive, of the previous year.~~

20 ~~(3) For each category of demand or disclosure, the provider~~  
21 ~~shall include all of the following information:~~

22 ~~(A) The number of times location information has been disclosed~~  
23 ~~by the provider.~~

24 ~~(B) The number of times no location information has been~~  
25 ~~disclosed by the provider.~~

26 ~~(C) The number of times the provider contests the demand.~~

27 ~~(D) The number of users whose location information was~~  
28 ~~disclosed by the provider.~~

29 ~~(b) Reports prepared pursuant to subdivision (a) shall be made~~  
30 ~~publicly available in an online, searchable format on or before~~  
31 ~~March 1 of each year. If the provider does not have an Internet~~  
32 ~~Web site, the provider shall send the reports to the Office of~~  
33 ~~Privacy Protection on or before March 1 of each year.~~

34 ~~(c) On or before March 1 of each year, a provider subject to~~  
35 ~~Section 22575 of the Business and Professions Code shall complete~~  
36 ~~one of the of the following actions:~~

37 ~~(1) Create a prominent hyperlink to its latest report prepared~~  
38 ~~pursuant to subdivision (a) in the disclosure section of its privacy~~  
39 ~~policy.~~

1     ~~(2) Post the report prepared pursuant to subdivision (a) in the~~  
2 ~~section of its Internet Web site explaining the way in which user~~  
3 ~~information and privacy issues related to its service are addressed.~~  
4     1546.3. Except as proof of a violation of this section, no  
5 evidence obtained in violation of this section shall be admissible  
6 in a civil or administrative proceeding.

O